

Fond du Lac Reservation

Business Committee

1720 Big Lake Rd.
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Phone (218) 879-4593
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Chairman
Peter J. Defoe

Secretary/Treasurer
Kevin R. Dupuis, Sr.

Dist. I Councilman
Eugene Reynolds

Dist. II Councilman
V.R. "Butch" Martineau

Dist. III Councilman
Roger "Bouda" Smith, Sr.

Section 1813 ROW Study
Office of Indian Energy and Economic Development
1849 C Street NW
Mail Stop 2749-MIB
Washington, D.C. 20240

May 12, 2006

Mr. Francois:

The Fond du Lac Band of Lake Superior Chippewa would like to take this opportunity to submit comments on the Energy Rights of Way on tribal lands study that is being conducted pursuant to Section 1813, of the Energy Policy Act of 2005. It is the understanding of the Fond du Lac Band that the study is charged with making findings in relation to the historic rates if compensation paid for rights-of-way, how sovereignty interests are implicated in these processes and to make recommendations for procedures to determine compensation for these grants of right-of-ways.


Between the scoping meetings held by the Department of Energy and Department of Interior in March and April in Denver, Colorado several questions came up as the type of data that was needed for the study.

As indicated by the Department of Interior and the Department of Energy, the following types of data were requested from the tribes by May 15, 2006. This information is provided on the attached sheet.

- Miles/rods or acres of transmission lines/pipelines on tribal land.
- Relative cost of ROWs on wholesale and consumer process.
- Tribal and industry methods for determining ROW compensation.
- Length of ROW lease periods.
- Tribal energy development associated with ROW development.
- ROW conditions to protect cultural values and/or sensitive species.
- Characteristics specific to ROW grants v. expansions v. renewals.

The Fond du Lac Reservation is interested in seeing the draft of the 1813 Study report that is to be completed by July 1, 2006.

Thank you.


Peter J. Defoe
Chairman
Fond du Lac Reservation Business Committee

Question 1:

Miles/rods or acres of transmission lines/pipelines on tribal land.

The Fond du Lac Reservation has 35 miles of pipeline right-of-way, with one or more pipes within each of the right-of-ways.

The Fond du Lac Reservation has approximately 184 miles of transmission and distribution lines. Lake Country Power has 7.53 miles of transmission lines on the Reservation. Minnesota Power has not provided this information at this time.

Question 2:

Relative cost of ROWs on wholesale and consumer process.

Fond du Lac does not have any data for this question.

Question 3:

Tribal and industry methods for determining ROW compensation.

Fond du Lac does not have any data for this question.

Question 4:

Length of ROW lease periods.

There are a number of ROW leases on the Reservation with term lengths ranging from 10 years to 50 years. The Bureau of Indian Affairs office in Bemidji, MN has this data, and the Reservation is currently researching the leases at this time. Additionally, the amount of time allocated with this question is not long enough to complete it in a satisfactory manner. Also, the Reservation is presently working on setting up meeting with Minnesota Power, Lake County Power and the Bureau of Indian Affairs about ROW/Lease issues.

Question 5:

Tribal energy development associated with ROW development.

We are accruing data on this subject by a Mineral Assessment Study. We are in the first year of this project and have been funded for two years to conduct this research. The subject matter covered by this is: market analysis for power, load assessment for Fond du Lac building, biomass assessment and wind assessment.

Question 6:

ROW conditions to protect cultural values and/or sensitive species.

Fond du Lac has a Cultural Resource Officer that reviews documents and ROW issues for the Fond du Lac Reservation. Fond du Lac also has two Environmental Specialists to review environmental issues for all projects on Band land. In addition, Fond du Lac also has a Water Resource Specialist, who reviews inspects to sensitive water resources.

Question 7:

Characteristics specific to ROW grants v. expansions v. renewals.

Regardless if there is a grant, expansion or renewal, NEPA review requirements need to be followed though any of these processes. Additionally, there is an internal Fond du Lac Land Use review for any development on Band land.

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RESOLUTION # 1115/06



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The Fond du Lac Reservation Business Committee, on behalf of the Fond du Lac Band of Lake Superior Chippewa, hereby enacts the following Resolution:

WHEREAS, the Fond du Lac Reservation is a sovereignty, created by the Treaty of September 30, 1854, 10 Stat. 1109, as the permanent home of the Fond du Lac Band of Lake Superior Chippewa, which possesses the inherent jurisdiction and authority to exercise regulatory control within the boundaries of the Fond du Lac Reservation; and

WHEREAS, it is the sovereign obligation of the Fond du Lac Reservation Business Committee, as the Governing Body of the Fond du Lac Band, under the Indian Reorganization Act, 25 U.S.C. § 461 et seq., and in accordance with the Indian Self-Determination Act, 25 U.S.C. § 450 et seq., to assume the responsibilities of self government; and

WHEREAS, Section 1813 of the Energy Policy Act of 2005 requires the U.S. Departments of Energy and Interior to prepare a study on the compensation practices and policy implications associated with the issuance of tribal consent for energy-related rights-of-way crossing tribal lands ("Right of Way Study"); and

WHEREAS, the Right of Way Study is a matter of great importance to the Fond du Lac Band and to all tribes, and may have significant implications regarding tribal sovereignty and future legislation; and

WHEREAS, under longstanding federal law, the consent of the governing body of a tribe must be obtained as a condition for the grant or renewal of a right-of-way across tribal lands; and

WHEREAS, this tribal consent requirement is a critical aspect of tribal sovereignty that allows tribal governments to negotiate acceptable terms, including those related to duration and compensation, for the use of tribal lands; and

WHEREAS, the Reservation Business Committee has reviewed the attached statement of tribal principles, and has determined that these principles should be incorporated into the Right-of-Way Study and maintained as a matter of federal law and policy;

NOW THEREFORE BE IT RESOLVED, that the Fond du Lac Reservation Business Committee does hereby approve the attached statement of tribal principles, and authorizes distribution of this Resolution as the official policy of the Fond du Lac Band; and

BE IT FURTHER RESOLVED, that the Reservation Business Committee directs that a copy of this Resolution be forwarded to the U.S. Departments of Energy and Interior for inclusion in the record related to the Right-of-Way Study.

CERTIFICATION

We do hereby certify that the foregoing Resolution was duly presented and acted upon by a vote of 3 for, 0 against, 0 silent, with a quorum of 4 being present at a Special Meeting of the Fond du Lac Reservation Business Committee held on April 27 2006 on the Fond du Lac Reservation.

Peter J. Defoe
Peter J. Defoe,
Chairman

Kevin R. Dupuis, Sr.
Kevin R. Dupuis, Sr.,
Secretary/Treasurer

12R042506

April 11, 2006

**INDIAN TRIBES – PARTNERS IN AMERICA’S ENERGY FUTURE
SECTION 1813 RIGHT-OF-WAY STUDY – TRIBAL PRINCIPLES**

1. **Tribal Sovereignty and Consent.** The power of tribes to prevent third parties from using tribal lands without tribal consent is a critical element of tribal sovereignty that has been established in Federal law and policy for over 200 years. The tribal consent requirement to the use of tribal lands should be honored and preserved.
2. **Conditions to Consent.** The tribal consent requirement includes the power of tribes to place conditions on the use of tribal lands, including conditions related to tribal jurisdiction, preservation of environmental and cultural resources, duration of use, and compensation.
3. **No Negative Effects.** Adherence to the tribal consent requirement has resulted in greater energy production in Indian country and lower energy costs to consumers. The tribal consent requirement for rights-of-way has not had a noticeable negative effect on the availability or cost of energy to consumers.
4. **Preservation of Tribal Jurisdiction.** No right-of-way agreement or other business arrangement that permits third-party use of tribal land should reduce the sovereign power of a tribe over its lands or the activities conducted on its lands in the absence of the specific consent of the tribe.
5. **Restricted Duration of Rights-of-Way.** Federal law and policy should not be changed to require perpetual rights-of-way or automatic renewals of rights-of-way because such changes would deprive tribes of management and control of their lands.
6. **Negotiated Compensation.** Tribes should continue to have the right to negotiate compensation for the use of tribal land that gives tribes a fair share of the economic benefits produced by use of their lands. Such revenues sustain tribal governments and cultures.
7. **National Security.** Indian nations are an integral component of energy security of the United States, not a threat to that security. History demonstrates that tribes have permitted critical energy facilities to be used pending compensation negotiations even in cases where tribal rights-of-way have expired.
8. **Industry Partnerships – Best Practices.** Federal law and policy should provide positive incentives to tribes and industry to foster partnerships and the mutual alignment of economic interests related to energy development, transmission and distribution.
9. **Appropriate Deference.** As reflected in the Indian Tribal Energy Development and Self Determination Act of 2005, deference to tribal decision-making should remain a fundamental component of Federal Indian energy policy.
10. **Allottee Experience.** The creation of a Federal administrative valuation process for fixing tribal right-of-way compensation would be an affront to tribal sovereignty and, as shown by the disastrous Federal management of Indian allottee resources, would be a mistake.